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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/020,814	12/12/2001	Henry L. Griesbach III	16,280-B	8921

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EXAMINER

CHAN, SING P

ART UNIT PAPER NUMBER

1734

DATE MAILED: 10/01/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/020,814

Applicant(s)

GRIESBACH ET AL.

Examiner

Sing P Chan

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-- The MAILING DATE of this communication appears on the cover sheet with the corresponding address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 December 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 3 and 4.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 4 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 4 contains the trademark/trade name CATALLOY. Where a trademark or trade name is used in a claim as a limitation to identify or describe a particular material or product, the claim does not comply with the requirements of 35 U.S.C. 112, second paragraph. See *Ex parte Simpson*, 218 USPQ 1020 (Bd. App. 1982). The claim scope is uncertain since the trademark or trade name cannot be used properly to identify any particular material or product. A trademark or trade name is used to identify a source of goods, and not the goods themselves. Thus, a trademark or trade name does not identify or describe the goods associated with the trademark or trade name. In the present case, the trademark/trade name is used to identify/describe a polymer and, accordingly, the identification/description is indefinite.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-3, 5-20 rejected under 35 U.S.C. 103(a) as being unpatentable over Kobylivker et al (U.S. 6,002,064) in view of Yahiaoui et al (U.S. 6,107,268).

Regarding claims 1, 6-10, and 12, Kobylivker et al discloses a method of forming stretch-thinned breathable films. The method includes providing a multilayer polymer film with skin layers, heating the film to an elevated temperature for stretching, uniaxially stretching the film 3-4 times, i.e. 300% to 400% of its original length, and thermal bonding the film to a non-woven web. (Col 7, line 31 to Col 8, line 58) Kobylivker et al does not disclose applying a surfactant to a non-woven web and bonding the film to the surfactant treated web. However, coating the non-woven web with a surfactant prior to bonding the web is well known and conventional as shown for example by Yahiaoui et al. Yahiaoui et al discloses method of forming a sorbent material. The method includes applying a wetting chemistry, i.e. a surfactant, to the non-woven to improve absorbency characteristic for multilayer laminates prior to bonding. (Col 3, lines 30-66 and Col 7, line 62 to Col 8, line 19)

It would have been obvious to one skilled in the art at the time the invention was made to provide a coating of surfactant onto the non-woven web as disclosed by Yahiaoui et al in the method of Kobylivker et al to provide an improved absorbency characteristic to allow faster absorption of liquids.

Regarding claims 2, 13, and 14, Kobylivker et al as modified above is silent as to retracting the film to lesser percentage such as about 20% prior to bonding film to the non-woven web. However, one reading Kobylivker et al and Yahiaoui et al would consider allowing the film to relax and retract prior to laminating the film to the non-

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woven web. One in the art would logically allow the film to relax to a range such as 20% of the length of the final stretch state to prevent the film from retracting once bonded to the non-woven web to provide a smooth surface.

It would have been obvious to one skilled in the art at the time the invention was made to logically allow the film to retract in the method of Kobylivker et al to allow the film to be bonded to the non-woven web without puckering to provide a smooth surface for article such as drape.

Regarding claim 3, Kobylivker et al discloses the multiplayer film includes 50% to 100% of propylene polymer, i.e. a polyolefin resin, and 30% to 90% of filler with a mean particle diameter of 0.1 to 7.0 microns. (Col 5, lines 10-20, Col 6, lines 46-57)

Regarding claim 5, Kobylivker et al discloses bonding a second non-woven web to the other side of the multilayer film. (Col 9, lines 4-7)

Regarding claims 6, 7, 17 and 18, Kobylivker et al discloses the stretch temperature for the polyolefin-based films are maintained at 150-200°F. (Col 8, lines 38-45)

Regarding claims 11 and 15, the laminate as disclosed by Kobylivker et al is considered to meets the 20 second or greater flame propagation criteria for a class 1 material.

Regarding claim 16, Kobylivker et al as modified above is silent as to the surfactant is coated onto the surface of the non-woven web. However, coating surfactant onto the surface of the non-woven web is well known and conventional as

shown for example by Yahiaoui et al. Yahiaoui et al discloses spraying the surfactant coating onto the non-woven web. (Col 8, lines 33-46)

It would have been obvious to one skilled in the art at the time the invention was made to applying the surfactant to the surface of the non-woven web by spraying as disclosed by Yahiaoui et al in the method of Kobylivker et al to provide an improve absorbency to the non-woven web and allow faster absorption of liquid.

Regarding claim 19, Kobylivker et al discloses the laminate is used to form surgical drapes. (Col 9, lines 19-21)

Regarding claim 20, Kobylivker et al discloses the laminate has a water vapor transmission test of 2400 to 4900 g/m²/day by the test method of ASTM standard E96-80. (Col 10, lines 22-64 and Table 2)

5. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kobylivker et al (U.S. 6,002,064) in view of Yahiaoui et al (U.S. 6,107,268) as applied to claim 1 above, and further in view of Haffner et al (U.S. 6,045,900).

Kobylivker et al as modified above is silent as to one layer of the film includes a CATALLOY polymer. Haffner et al discloses a method of forming a breathable film laminate. The method includes providing one layer of the film form from polyolefin polymer component with CATALLOY polymer. (Col 10, lines 2-19)

It would have been obvious to one skilled in the art at the time the invention was made to provide one layer of the multilayer film with CATALLOY polymer as disclosed by Haffner et al in the method of Kobylivker et al to provide a good breathability and barrier properties with excellent peel strength.


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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sing P Chan whose telephone number is 703-305-3175. The examiner can normally be reached on Monday-Friday 7:30AM-11:15AM and 12:15PM-4:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Crispino can be reached on 703-308-3853. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

Chan Sing P
spc



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